

## **REMARKS**

### **A. Status of the Application**

- Claims 26, 28 to 30, 33 to 37, 39 and 41 to 50 are pending in the application, of which claims 26, 42 and 48 are independent claims.
- Claim 29 has been amended.

Accordingly, entry of the amendment is respectfully requested. Applicants have amended the claim to recite particular embodiments that Applicants, in their business judgment, have determined to be commercially desirable at this time. The claim amendment has not been submitted for any reasons relating to patentability.

Applicants intend to pursue the subject matter of the previously cancelled claims, in one or more continuing applications.

### **B. Claim Objections**

On page 3, the Office Action objected to claims 43 to 47, 49 and 50 as allegedly improper because “a multiple dependent claim cannot depend form [sic] any other multiple dependent claim.”

Claims 43 to 47, 49 and 50, however, are not multiple dependent claims. But rather, they are dependent claims which reference a preceding claim. A claim which makes reference to a preceding claim in order to define a limitation is an acceptable claim construction which should not necessarily be rejected as improper or confusing. *See* MPEP § 2173.05(f). Accordingly, Applicants respectfully request that the claim objections be withdrawn.

C. Claim Rejections Under 35 U.S.C. § 112

On page 3, the Office Action rejected claim 29 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter. Claim 29 has been amended.

D. Claim Rejections Under 35 U.S.C. § 103

On page 3, the Office Action rejected claims 26, 28 to 30, 33 to 35, 37, 39 and 41 to 50 under 35 U.S.C. §103(a) as being unpatentable over U.S. 6,195,647 (“Martyn”) in view of U.S. Patent Publication 20040158519 (“Lutnick”). However, no *prima facie* case of obviousness has been proven for any of the claims.

The Office Action concedes in numerous sections that “Martyn et al. does not disclose” all of the limitations recited in Applicant’s invention. *See, e.g.*, pgs. 4, 5, 9, 10, 12. Instead, the Office Action contends that the Lutnick reference supplies the deficiencies. However, the Office Action improperly applied the Lutnick reference to this case. As stated in 35 U.S.C. § 103(c)(1):

Subject matter developed by another person, which qualifies as prior art only under one or more subsections (e), (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, ... subject to an obligation of assignment to the same person (emphasis added).

Both Applicants’ invention and the Lutnick reference were subject to an obligation of assignment to the same person, namely eSpeed, Inc., at the time of the claimed invention. As such, the Lutnick reference does not preclude patentability under section

103. Therefore, the Office Action fails to make a *prima facie* case of obviousness for any of the claims.

E. General Comments on Dependent Claims

Since each of the dependent claims depends from a base claim that is believed to be in condition for allowance, Applicants believe that it is unnecessary at this time to argue the allowability of each of the dependent claims individually. However, Applicants do not necessarily concur with the interpretation of the dependent claims as set forth in the Office Action, nor do Applicants concur that the basis for the rejection of any of the dependent claims is proper. Therefore, Applicants reserve the right to specifically address the patentability of the dependent claims in the future, if deemed necessary.

F. Conclusion

In general, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In view of the foregoing amendments and remarks, Applicants respectfully submit that the application is in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

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Respectfully submitted,

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